

REMARKS/ARGUMENTS

In view of the following remarks and arguments, Applicant believes the pending application is in condition for allowance.

I. Status of the Claims

Claims 4 and 8-10 are pending and are presented herein as a courtesy to the Examiner. No amendments to the claims are made.

Claims 1-3 and 5-7 were previously canceled without prejudice or disclaimer of the subject matter contained therein.

II. Telephone Interview

Applicant and Applicant's representatives appreciatively thank Examiner Melanie J. Hand for the courtesies extended to Applicant's representative, Louis DelJuidice, in a telephone interview held on April 16, 2007. The Examiner kindly clarified that the following remarks and arguments should be presented formally in the form of a written Response.

IIIa. Rejections of Claims 8 and 9 under 35 U.S.C. § 103(a)

Claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent Application Publication No. 2004/0116885 to Soerens et al. ("Soerens"). The Examiner states that Soerens in combination with the Examiner's statement of the ordinary skill in the art renders the claims obvious.

Applicant respectfully submits that Soerens does not qualify as prior art to the present application. Soerens was filed on December 13, 2002 and published on June 17, 2004. The present application was filed on April 12, 2004, and is a continuation of and claims priority from

U.S. Patent Application Serial No. 09/606,328, which was filed on June 29, 2000. Therefore, the earliest effective filing date of the present application predates the filing date of Soerens.

Accordingly, Applicant respectfully requests that the rejections of claims 8 and 9 be withdrawn.

IIIb. Rejection of Claim 4 under 35 U.S.C. § 103(a)

Claim 4 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Soerens in view of U.S. Patent No. 6,039,716 to Jessup et al. ("Jessup"). The Examiner states that Soerens in combination with Jessup renders the claim obvious.

For the same reason as stated above in overcoming the rejections of claims 8 and 9, Applicant respectfully submits that Soerens does not qualify as prior art to the present application. Accordingly, Applicant respectfully requests that the rejection of claim 4 be withdrawn.

IIIc. Rejection of Claim 10 under 35 U.S.C. § 103(a)

Claim 10 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Soerens in view of U.S. Patent No. 5,885,265 to Osborn, III et al. ("Osborn"). The Examiner states that Soerens in combination with Osborn renders the claim obvious.

For the same reason as stated above in overcoming the rejections of claims 8 and 9, Applicant respectfully submits that Soerens does not qualify as prior art to the present application. Accordingly, Applicant respectfully requests that the rejection of claim 10 be withdrawn.

IV. Request for Withdrawal of Finality of the Outstanding Office Action

Since all the rejections of the pending claims relied on Soerens, Applicant respectfully submits that the final rejections thereof were issued prematurely. Accordingly, Applicant respectfully requests that the finality of the rejections be withdrawn.¹

¹ MPEP provides: "If, on request by applicant for reconsideration, the primary examiner finds the final rejection to have been premature, he or she should withdraw the finality of the rejection." MPEP, § 706.07(d), ¶ 1.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

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